

Copyright, fan generated contents, and open society in China

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VALORIZATION ADDENDUM

1. SOCIAL RELEVANCE OF THIS RESEARCH

Defeating online piracy is of top concern for copyright owners nowadays in the digital era, as piracy is deemed detrimental to the profitability of copyright owners. However, the concept of piracy today is broader than before, as it now includes many private utilizations of copyright contents, such as fan activities. However, the conclusion of this research indicates that, unlike pure theft and free-riders, fan activities and creations, if properly guided, are beneficial to copyright owners. This research aims to justify fan activities to a degree, which can benefit the society in three different ways: first, fan activities and creations can thus be separated from piracy, which will mitigate the problem of massive online copyright infringement; second, fan activities tend to generate creative ideas and produce promotional effects for the original products; third, fan activities are not just about producing derivative fan creations for copyright owners, they are about one form of civic engagement and expressing oneself through creation. Hence the justification of fan activities could help in the promotion of an open society in China.

Specifically, if foreign copyright owners in the Chinese market adopted the proposed solution of this book, a flexible and cooperative relationship between the fan creators and copyright owners could thus be established. When fans can be partners, copyright owners will be able to cultivate their fan base, and fan creators will not be deemed as infringers anymore. The copyright owners can thus put their resources on fighting commercial piracy, and enjoy the benefits of cooperation with fans. They will benefit from new derivative works, ideas and emerging authors, as the proposed solution will give them a degree of control over the fans and their derivative fan creations.

The economic gain of the copyright owners makes sure that fan creativity will be officially tolerated and unleashed, and the society could thus

enjoy a variety of derivative works via a legitimate way in the future, which is in accordance with the purpose of copyright. Moreover, the proposed solution is designed in a way so that the fan creators are all on a voluntary basis, and more freedom to participate in fan activities means that more people are allowed to subtly engage in civic discussions and express themselves via this way, which is beneficial to society as a whole.

2. AUDIENCE BESIDES ACADEMIC COMMUNITY

Copyright-related industries might be the first group who can benefit from the results of this research. As a matter of fact, copyright-related industries have long been investing a lot on copyright enforcement against infringing activities, this is especially so in the digital age. Furthermore, cracking down on commercial piracy is one thing, and on fan creators is another. Copyright owners have difficulties when treating infringement cases related to fans. Moreover, as copyright is firmly connected with creativity, they are also in great need of talent and new ideas. In terms of a foreign market like China, copyright owners are keen to find an alternative to bypass the censorship and deliver the products to Chinese consumers. The proposed solution of this research can address these issues. Firstly, in the cooperative setting that this research proposes, fan creators are identified and treated differently from commercial pirates and other free-riders, which will greatly reduce the investment on copyright enforcement. Secondly, copyright owners can find plentiful talents and ideas in fan groups. Thirdly, in a transnational scenario, the proposed design could help the works of copyright owners to enter a restricted foreign market in an unofficial way, which will help them maintain a high level of exposure there and acquire statistics related to their copyright products from fans. These will present a much more precise vision about the market to copyright owners in a low-cost way.

Policy makers might be interested in the results of this research. This research is concerned with a central question regarding how to design our future copyright law so that the fan problems could be properly addressed. It also reminds the policy makers that although copyright is “territorial” in nature, we are in a borderless world that consists of different countries with different cultural policies. Therefore, the design of future copyright policy should not only focus on the protection and enforcement of copyright in a foreign market, but should also consider the actual per-

formance of the infringed copyright work in there. This research shows how different the policies of different countries can be. In terms of the Chinese market, if strict enforcement is not feasible and can lead to unintended results, policy makers may have to alter their copyright policies regarding a foreign country, in order to get the best results.

Lawmakers will be another group who can benefit from the results of this research. On the one hand, this research has provided a comprehensive overview of China's laws and regulations related to derivative fan creations. It demonstrates the deficiencies of the current design, and proposes several revisions to the Copyright Law of China. Therefore, this research will be helpful for lawmakers in China in revising its copyright law, as China is currently revising its copyright law, and the proposed new rules will benefit the creative industry of China as well. On the other hand, this research is also beneficial to lawmakers at international levels, as it is worth considering whether the fan problems can be addressed further by pushing for new international copyright conventions.

3. PUBLICATION OF THE RESEARCH RESULTS

First, the results of this research will be published in the form of a book. The book will be available to students and researchers who have special interests in the topics of either media law, copyright law or comparative law.

Second, some chapters or sections in this thesis have already been or are in the pipeline for being published in law journals. For instance, the discussions related to fan creations of Japanese anime and their copyright issues have already been published by the *American Journal of Comparative Law*, Volume 62, Number 4, December 2014, pp. 1009-1042, with the title of "*What Can We Learn from Japanese Anime Industries? The Differences Between Domestic and Overseas Copyright Protection Strategies Towards Fan Activities*". And a brief discussion about the proposed solution and its application on fansubs has already been scheduled for publication by the *Oregon Review of International Law*, Volume 16, issue 2, with the title of "*Fansubs and Market Access of Foreign Audiovisual Products in China: The Copyright Predicament and the Use of No Action Policy*".

Third, from 2012 to 2015, part of the results of this research have been presented in the Ius Commune Research School conferences and

workshops, the PhD sections of the European Intellectual Property Institutes Network (EIPIN) Congresses, the Symposium on Copyright and Media Pluralism in China organized by the School of Law, University of Oregon.

4. INNOVATIVENESS OF THE RESEARCH

Legal scholars have long been searching for a solution to address the massive online infringement problem, but the existing proposals are far from satisfactory. Normally the result of most law amendment proposals is a copyright law with a high protection standard which yields to the copyright owners' side. Due to copyright's territorial nature, most current alternative proposals, such as CC licenses and NAPs are aiming on solving the problem on a country-by-country basis. This research studies the fan activities in three different legal systems and their legal status within, and re-tests the existing proposals and proposes a new solution. To summarize, this research is innovative at least from three perspectives.

From a comparative law perspective, this research is the first that compares copyright legislations regarding fan activities of China, the U.S., and Japan, as in these three countries fan activities are commonly seen. The comparison is not just a mere description of the differences and similarities in black letter laws, but it also analyzes whether or not the differences in the policy and enforcement level will influence the foreign copyright owners' choice with respect to the treatment of fan activities. The answer to this question is particularly important before any transnational solution is proposed.

From a theoretical perspective, this research is the first that proposes a solution which can address transnational copyright problems of fan creations. It re-examines the existing proposals which could solve the fan problems, and finds that the focus of the previous solutions has been placed on raising the protection standard or on solving copyright problems of fan creations within national boundaries. As a result, the solutions proposed in previous literature has been heavily criticized for its bias toward copyright owners and inefficiency in terms of addressing transnational copyright problems. By taking those criticisms as well as the endemic problems of the Chinese market into consideration, this research reveals the underlying reasons of the inefficiency of previous proposals, and proposes an alternative solution which is flexible and well balanced,

and compatible with a transitional period of copyright jurisprudence and China's specific environment. It reconstructs the theory of Creative Common License and No Action Policy and proposes one which can address transnational copyright enforcement problems.

5. SCHEDULE & IMPLEMENTATION

The implementation of the proposed solution of this research is twofold:

First, with the publication of the research results, industrial players might be able to get the core idea of the design and apply it to transnational scenarios. It is to be expected that industrial players will be interested, as the pros and cons of doing so are well presented in this book, the articles which were already published, and the presentations done by the author in various occasions. Moreover, it is easier to accept for the industry side, as the design is flexible, and its copyright rules are concise. The author will also work in close relationship with academia and industrial players in China, to further promote the application of and examine this design, and monitor and record the process and consequential results.

Second, the results of this research can be made available to policy makers as recommendations for law revision as well. This research also contains several amendment proposals, which are related to derivative works and parody, to the Copyright Law of China. After the publication and the promotion of the result, lawmakers such as the National People's Congress in China might be attracted, as the Copyright Law of China is currently being revised and is open for opinions. However, as this research is only aiming for a transitional period, more research should be done in the future if a thorough reform plan is needed for the contemporary copyright jurisprudence. In this sense, this research also stimulates more research over topics closely related to copyright reform.

